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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,582	07/20/2001	Erkki Ruoslahti	P-LJ 4857	3748
23601	7590	03/24/2004	EXAMINER	
CAMPBELL & FLORES LLP 4370 LA JOLLA VILLAGE DRIVE 7TH FLOOR SAN DIEGO, CA 92122			AUDET, MAURY A	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/910,582

**Applicant(s)**

RUOSLAHTI ET AL.

**Examiner**

Maury Audet

**Art Unit**

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-26 and 31-36 is/are pending in the application.
- 4a) Of the above claim(s) 31 and 36 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-26 and 35 is/are allowed.
- 6) ☒ Claim(s) 32 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's response of 12/19/2003 to the Office Action of 8/19/2003, electing Group I, with traverse, is acknowledged. Applicant has argued that a search of *any* peptide that selectively homes to ischemic tissue, or a conjugate thereof (Group II), with those of SEQ ID NOS: 2-4, and 9-10 (Group I) would not constitute an undue burden on the examiner. Applicant's arguments have been fully considered but are not persuasive. In order to conduct a peptide search, a structure or sequence must be submitted which can be satisfactorily searched against the relevant databases. Applicant has provided neither of these. Thus, a search of *any* peptide that selectively homes to ischemic tissue, or a conjugate thereof, with no structure/sequence as a guide would be an unduly burdensome search of undefined peptides. Claims 31 and 36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group II, there being no allowable generic or linking claim. Claims 20-26 and 32-35 (Group I) are examined on the merits.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 32-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 32 and 33 depend from independent claim 31, which is drawn to conjugate containing *any* peptide that selectively homes to ischemic tissue, and linked to a moiety. As the limitations of claim 31 have not been clearly defined, it is unclear what is contemplated by the invention of claims 32 and 33. Additionally, claim 31 is drawn to non-elected subject matter. It is suggested that Applicant rewrite the claims 32 and 33 to include the limitations of the allowable subject matter.

#### *Allowable Subject Matter*

Claims 20-26 and 35 are allowable over the prior art, based on the most recent search. The prior art of record does not teach nor reasonably suggest a conjugate consisting of SEQ ID NOS: 2-4, or 9-10; or method of treating a cardiovascular disease using such a conjugate.

#### *Conclusion*

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maury Audet whose telephone number is 571-272-0960. The examiner can normally be reached from 7:00 AM – 5:30 PM, off Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached at 571-272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

MA, 3/20/04



CHRISTOPHER R. TATE  
PRIMARY EXAMINER